

STATE OF FLORIDA
DEPARTMENT OF ECONOMIC OPPORTUNITY

JACQUELINE ROGERS,
THERESA BLACKWELL, AND
WILLIAM BEECH,

Petitioners,

vs.

DOAH CASE NO.: 20-3015GM

ESCAMBIA COUNTY, A POLITICAL
SUBDIVISION OF THE STATE OF
FLORIDA,

Respondent,

and

FRANK E. WESTMARK AND
ELIZABETH J. WESTMARK,

Intervenors

_____ /

FINAL ORDER

The Division of Community Development within the Florida Department of Economic Opportunity (“Department”) considered this matter following the receipt of a recommended order (“Recommended Order”).¹ The Administrative Law Judge (“ALJ”) assigned to this matter by the Division of Administrative Hearings (“DOAH”) issued the Recommended Order on May 7, 2021.

Background

This is a proceeding to determine whether the Escambia County (“County”) comprehensive plan amendments adopted by Ordinance Nos. 2020-14, 2020-15, and 2020-16 (“Plan Amendments”), on June 4, 2020, are “in compliance,” as defined in section 163.3184(1)(b),

¹ A copy of the Recommended Order is attached hereto as Exhibit “A.”

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DIVISION OF
ADMINISTRATIVE HEARINGS

Florida Statutes (2020).² The Plan Amendments amend the County's Comprehensive Plan ("Comp Plan") by allowing four parcels to withdraw from the County's Mid-West Optional Sector Plan ("OSP"). The Plan Amendments also assign each parcel with a new Mixed-Use Suburban ("MU-S") future land use ("FLU") designation.

On July 6, 2020, Jacqueline Rogers, Theresa Blackwell, and William Beech ("Petitioners"), filed a petition for an administrative hearing challenging whether the Plan Amendments are "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. Petitioners alleged that the Plan Amendments (1) are internally inconsistent with the Escambia County Comprehensive Plan, (2) are not based on relevant and appropriate data and analysis, and (3) do not establish meaningful and predictable standards.

On July 17, 2020, Frank E. Westmark and Elizabeth J. Westmark ("Intervenors") filed a Motion to Intervene as full parties, which was granted on the same day.

A duly noticed final hearing was held via Zoom before a duly designated ALJ on November 12-13, 2020, and December 10, 2020.

On May 7, 2021, the ALJ issued the Recommended Order, recommending the Department issue a final order determining the Plan Amendments to be in compliance. On May 24, 2021, Petitioners timely filed exceptions to the Recommended Order, which have been considered in this Final Order.

Role of the Department

Petitioners filed their challenge pursuant to sections 120.569, 120.57(1), and 163.3184(5), Florida Statutes. The ALJ held a hearing and issued the Recommended Order, recommending that the Department determine the Plan Amendments are in compliance.

² References to the *Florida Statutes* are to the 2020 version, unless otherwise stated.

The Department may determine the Plan Amendments are in compliance and enter a final order to that effect or determine that the Plan Amendments are not in compliance and refer the Recommended Order and the Department's determination to the Administration Commission for final agency action. § 163.3184(5)(e), Fla. Stat.

The Department received a record consisting of the documentary evidence introduced at the final hearing and a three-volume transcript of the proceedings of the final hearing. The Department reviewed the record and issues this Final Order in accordance with sections 120.57(1)(k)-(l) and 163.3184(5)(e), Florida Statutes.

If the Department rejects or modifies a conclusion of law or interpretation of an administrative rule, then the Department must state with particularity its reasons for such rejection or modification. § 120.57(1)(l), Fla. Stat. If the Department rejects or modifies a finding of fact, then the Department must state with particularity that the finding was not based on competent substantial evidence or that the proceedings on which the finding was based did not comply with essential requirements of law. *Id.*

Pursuant to section 120.57(1)(k), Florida Statutes, the Department must issue an explicit ruling on each exception. The Department is not required to rule on an exception that does not clearly identify the disputed portion of the Recommended Order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record. § 120.57(1)(k), Fla. Stat.

Standard of Review

Findings of Fact

Section 120.57(1)(l), Florida Statutes, prescribes that in its issuance of a final order, the Department may not reject or modify the findings of fact of the ALJ "unless the agency first

determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law.” Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc., Great Am. Div. v. Unemployment. App. Comm'n*, 671 So. 2d 287, 289 n.3 (Fla. 5th DCA 1996). Evidence is substantial if there is “some (more than a mere iota or scintilla) real, material, pertinent, and relevant evidence (as distinguished from ethereal, metaphysical, speculative or merely theoretical evidence or hypothetical possibilities) having definite probative value (that is, ‘tending to prove’) as to each essential element” of the claim. *Id.* The Department is “not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Heifetz v. Dep't of Bus. Reg., Div. of Alcoholic Bev. & Tob.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985). “If the ALJ's findings of fact are supported by competent, substantial evidence, the agency cannot reject them even to make alternate findings that are also supported by competent, substantial evidence.” *Lantz v. Smith*, 106 So. 3d 518, 521 (Fla. 1st DCA 2013). The Department may reject findings of fact if the proceedings on which the findings were based did not comply with the essential requirements of law. *See* § 120.57(1)(l), Fla. Stat.; *Dept. of Corrections v. Bradley*, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987). In this context, Florida’s First District Court of Appeal has characterized a failure “to comply with the essential requirements of the law” as “a procedural irregularity.” *Beckett v. Dep't of Fin. Servs.*, 982 So. 2d 94, 102 (Fla. 1st DCA 2008) (ruling that the agency erred by concluding that the ALJ had failed to comply with the essential requirements of the law “[b]ecause there has been no suggestion of a procedural irregularity”).

Conclusions of Law

Section 120.57(1)(l), Florida Statutes, authorizes the Department to reject or modify a conclusion of law over which the agency has substantive jurisdiction. § 120.57(1)(l), Fla. Stat.; *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1010 (Fla. 1st DCA 2001). If the Department rejects or modifies any of the ALJ's conclusions of law, then the Department must state with particularity its reasons for rejecting or modifying the conclusion, and must make a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified. § 120.57(1)(l), Fla. Stat. The Department may not reject or modify a finding that is substantially one of fact simply by treating the finding as a legal conclusion. *See Abrams v. Seminole Cnty. Sch. Bd.*, 73 So. 3d 285, 294 (Fla. 5th DCA 2011). Additionally, a rejection or modification of a conclusion of law may not form a basis for rejection or modification of a finding of fact. § 120.57(1)(l), Fla. Stat.

Rulings on Petitioners' Exceptions to Recommended Order

(1) – Exception 1: Paragraph 5 of the Recommended Order (RO page 5)

In Exception 1, Petitioners take exception to the finding of fact in paragraph 5 relating to Section 163.3245(3) of the Florida Statutes. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 1 fails to include a legal basis for rejecting or modifying any of the ALJ's findings of fact and does not include appropriate and specific citations to the record. To the extent Petitioners argue the finding is an incorrect legal conclusion, the Department has considered Exception 1 and finds that the ALJ's failure to quote the statute verbatim is immaterial to the ALJ's findings of fact and conclusions of law.

Exception 1 is DENIED.

(2) – Exception 2: Paragraph 10 of the Recommended Order (RO page 6)

In Exception 2, Petitioners take exception to the finding of fact in paragraph 10 relating to the OSP overlay. Petitioners allege that there is no data or evidence to support the ALJ's finding that Chapter 16 of the County's Comp Plan contains the "OSP Overlay." Petitioners also argue that the finding is a conclusion of law rather than a finding of fact.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Hearing Transcript, Volume II, page 475-479. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 10.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 2 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 2 is DENIED.

(3) – Exception 3: Paragraph 14 of the Recommended Order (RO page 7)

In Exception 3, Petitioners take exception to the finding of fact in paragraph 14 relating to

the OSP overlay. Petitioners allege that there is no evidence to support the finding of fact and also argue that the finding is an incorrect conclusion of law.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Hearing Transcript, Volume II, pages 343-349 and 409-411. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 14.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 3 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 3 is DENIED.

(4) – Exception 4: Paragraph 17 of the Recommended Order (RO page 7)

In Exception 4, Petitioners take exception to the finding of fact in paragraph 17. Petitioners allege that there is no evidence to support the finding of fact concerning the properties' underlying zoning.

The Department finds there is competent substantial evidence in the record to support the

ALJ's finding of fact. Hearing Transcript, Volume II, pages 343-349 and 409-411. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 17.

Exception 4 is DENIED.

(5) – Exception 5: Paragraph 20 of the Recommended Order (RO page 8)

In Exception 5, Petitioners take exception to the ALJ's finding of fact in paragraph 20 that "Conservation Neighborhoods are mostly high and dry, like the Westmark property." Petitioners allege that no data or factual evidence supports this statement.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Intervenors' Exhibit 2. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired

ultimate conclusion.” *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ’s findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ’s finding of fact in paragraph 20.

Exception 5 is DENIED.

(6) – Exception 6: Paragraphs 26 and 27 of the Recommended Order (RO pages 9-10)

In Exception 6, Petitioners take exception to the findings of fact in paragraphs 26 and 27. Petitioners allege that the ALJ should not have relied on testimony from the County’s Urban Planner. The Petitioners also appear to request that the Department consider an exhibit that was not entered into evidence. The Department cannot reweigh evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 6 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Additionally, section 120.57(1)(k), Florida Statutes, provides that an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 6 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

Nonetheless, the Department has considered Petitioners’ Exception 6 and finds that the ALJ’s findings of fact in paragraphs 26 and 27 are supported by competent substantial evidence. The Department cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

Exception 6 is DENIED.

(7) – Exception 7: Paragraph 29 of the Recommended Order (RO page 10)

In Exception 7, Petitioners take exception to the finding of fact in paragraph 29. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 7 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

Exception 7 is DENIED.

(8) – Exception 8: Paragraphs 29 and 30 of the Recommended Order (RO page 10)

In Exception 8, Petitioners take exception to the findings of fact in paragraphs 29 and 30. Petitioners allege that the ALJ’s findings of fact are legally erroneous conclusions of law. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 8 fails to include appropriate and specific citations to the record to support Petitioners’ position.

Nonetheless, the Department has considered Petitioners’ Exception 8 and finds that the findings of fact in paragraphs 29 and 30 are supported by competent substantial evidence. The Department cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

To the extent Petitioners’ exception argues the findings are incorrect legal conclusions, the Department has considered Exception 8 and cannot substitute legal conclusions as reasonable as or more reasonable than those reached by the ALJ.

Exception 8 is DENIED.

(9) – Exception 9: Paragraph 32 of the Recommended Order (RO page 10)

In Exception 9, Petitioners take exception to the finding of fact in paragraph 32. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 9 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

To the extent Petitioners’ exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 9 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 9 is DENIED.

(10) – Exception 10: Paragraphs 34-36 of the Recommended Order (RO page 11)

In Exception 10, Petitioners take exception to the findings of fact in paragraphs 34-36 concerning whether properties opting out of the sector plan are subject to the Comp Plan’s OSP policies. Petitioners argue that the findings are not supported by competent substantial evidence and that the findings are also incorrect conclusions of law.

The Department finds there is competent substantial evidence in the record to support the ALJ’s finding of fact. Hearing Transcript, Volume II, page 475-479. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is “some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, ‘tending to prove’) as to each essential element” of the claim. *Id.* It is not the place of the Department to “weigh the

evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ’s findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ’s finding of fact in paragraphs 34-36.

To the extent Petitioners’ exception argues the findings are incorrect legal conclusions, the Department has considered Exception 10 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 10 is DENIED.

(11) – Exception 11: Paragraph 37 of the Recommended Order (RO page 11)

In Exception 11, Petitioners take exception to the finding of fact in paragraph 37 and it appears as though Petitioners request that the Department consider the testimony presented by their expert witness, rather than the testimony presented by County’s expert witness. The Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 11 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 11 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

Nonetheless, the Department has considered Petitioners’ Exception 11 and finds that the finding of fact in paragraph 37 is supported by competent substantial evidence. The Department

cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

Exception 11 is DENIED.

(12) – Exception 12: Paragraph 38 of the Recommended Order (RO pages 11-12)

In Exception 12, Petitioners take exception to the finding of fact in paragraph 38 that states the MU-S FLU designation is compatible with adjacent, existing, and planned future land uses.

Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 12 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

Exception 12 is DENIED.

(13) – Exception 13: Paragraph 39 of the Recommended Order (RO page 12)

In Exception 13, Petitioners take exception to the finding of fact in paragraph 39 relating to the testimony presented by witnesses on behalf of the County. The Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 13 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Additionally, section 120.57(1)(k), Florida Statutes, provides that an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 13 fails to include a legal basis for rejecting or modifying any of the ALJ’s finding of fact.

Nonetheless, the Department has considered Petitioners' Exception 13 and finds that the ALJ's finding of fact in paragraph 39 is supported by competent substantial evidence. The Department cannot determine that the proceedings on which the finding was based failed to comply with the essential requirements of law.

Exception 13 is DENIED.

(14) – Exception 14: Paragraph 40 of the Recommended Order (RO page 12)

In Exception 14, Petitioners take exception to the finding of fact in paragraph 40. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 14 fails to include a legal basis for rejecting or modifying any of the ALJ's findings of fact and does not include appropriate and specific citations to the record.

Nonetheless, the Department has considered Petitioners' Exception 14 and finds that the ALJ's finding of fact in paragraph 40 is supported by competent substantial evidence. The Department cannot determine that the proceedings on which the finding was based failed to comply with the essential requirements of law. To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 14 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 14 is DENIED.

(15) – Exception 15: Paragraph 44 of the Recommended Order (RO pages 12-13)

In Exception 15, Petitioners take exception to the finding of fact in paragraph 44 concerning data review and analysis during the opt-out application process. Petitioners allege that there is no competent substantial evidence to support the finding. Petitioners also take exception

to the testimony presented by Intervenors' expert witness. Exception 15 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

The Department determines from the record that the finding of fact in paragraph 44 is supported by competent substantial evidence. Hearing Transcript, Volume II, pages 334-353 and Volume III, pages 538-564. It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 44.

Exception 15 is DENIED.

(16) – Exception 16: Paragraph 45 of the Recommended Order (RO page 13)

In Exception 16, Petitioners take exception to the finding of fact in paragraph 45 summarizing the testimony presented by the County's witness on the impacts of the FLUM change to MU-S. Although difficult to identify Petitioners' legal basis for Exception 16, it appears as though Petitioners allege that the ALJ's finding is an incorrect conclusion of law.

Pursuant to section 120.57(1)(k), Florida Statutes, an "agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Exception 16 fails to include a legal basis for rejecting or modifying any of the ALJ's findings of fact and does not include appropriate and specific citations to the record. In addition, the Department cannot reweigh the evidence or judge

credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 16 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 16 is DENIED.

(17) – Exception 17: Paragraph 46 of the Recommended Order (RO page 13)

In Exception 17, Petitioners take exception to the finding of fact in paragraph 46. Petitioners appear to request that the Department reject testimony and, instead, consider evidence that was not admitted into evidence. The Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 17 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Petitioners also allege that there is no competent substantial evidence to support the finding that the MU-S FLU category would have sufficient infrastructure and service capacity. The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So.

3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 46.

Exception 17 is DENIED.

(18) – Exception 18: Paragraphs 47 and 48 of the Recommended Order (RO page 13)

In Exception 18, Petitioners take exception to the findings of fact in paragraphs 47 and 48. Petitioners complain that the ALJ did not address any of the evidence they presented at hearing or in their Proposed Recommended Order.

Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 18 fails to include a legal basis for rejecting or modifying any of the ALJ's findings of fact and does not include appropriate and specific citations to the record. In addition, the Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 18 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 18 is DENIED.

(19) – Exception 19: Paragraph 50 of the Recommended Order (RO pages 13-14)

In Exception 19, Petitioners take exception to the finding of fact in paragraph 50. Petitioners allege that there was no competent substantial evidence presented at the hearing to support the finding that septic systems are limited to a maximum of four dwelling units per acre by state health department regulation. Petitioners also take exception to testimony presented by

Respondent's and Intervenors' expert witness.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding. Hearing Transcript, Volume II, page 497 and Volume III, pages 680-681. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 50. The Department also denies the exception to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Exception 19 is DENIED.

(20) – Exception 20: Paragraph 51 of the Recommended Order (RO page 14)

In Exception 20, Petitioners take exception to the finding of fact in paragraph 51. Petitioners allege that the finding that wastewater treatment facilities are available to service the Westmark Property is not based on competent substantial evidence. Petitioners also take exception to testimony presented by Respondent's and Intervenors' expert witness. The Department denies the exception to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

The Department finds there is competent substantial evidence in the record to support the

ALJ's finding. Hearing Transcript, Volume II, page 350 and Volume III, page 548-550. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 51.

Exception 20 is DENIED.

(21) – Exception 21: Paragraph 53 of the Recommended Order (RO page 14)

In Exception 21, Petitioners take exception to the finding of fact in paragraph 53 concerning sufficient water availability. Petitioners allege that the ALJ's finding is not based on competent substantial evidence.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Hearing Transcript, Volume III, page 538-550. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent

substantial evidence supports the ALJ's findings of fact, the Department may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 53.

Exception 21 is DENIED.

(22) – Exception 22: Paragraph 54 of the Recommended Order (RO pages 14-15)

In Exception 22, Petitioners take exception to the finding of fact in paragraph 54 concerning the availability of water and sewer services on the Westmark Property. Petitioners allege that the ALJ's finding is not based on competent substantial evidence. Petitioners also take exception to testimony presented by Respondent's and Intervenors' expert witness.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding. Hearing Transcript, Volume III, page 538-564. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 54. The Department also denies the exception to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Exception 22 is DENIED.

(23) – Exception 23: Paragraphs 55 and 56 of the Recommended Order (RO page 15)

In Exception 23, Petitioners take exception to the findings of fact in paragraphs 55 and 56. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 23 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

Exception 23 is DENIED.

(24) – Exception 24: Paragraph 59 of the Recommended Order (RO pages 15-16)

In Exception 24, Petitioners take exception to the finding of fact in paragraph 59 concerning Conservation Neighborhood open space requirements. Petitioners allege that the finding is an erroneous conclusion of law rather than a finding of fact.

The Department finds there is competent substantial evidence in the record to support the ALJ’s finding that the requirements do not include any direction as to the location and preservation of open space. Hearing Transcript, Volume III, page 569-578. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is “some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, ‘tending to prove’) as to each essential element” of the claim. *Id.* It is not the place of the Department to “weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ’s findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds

competent substantial evidence supports the ALJ's finding of fact in paragraph 59.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 24 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 24 is DENIED.

(25) – Exception 25: Paragraph 60 of the Recommended Order (RO page 16)

In Exception 25, Petitioners take exception to the finding of fact in paragraph 60 concerning open space uses permitted by the DSAP. Petitioners allege that the finding is a conclusion of law rather than a finding of fact.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Hearing Transcript, Volume III, page 569-578. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 60.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 25 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 25 is DENIED.

(26) – Exception 26: Paragraph 61 of the Recommended Order (RO page 16)

In Exception 26, Petitioners take exception to the finding of fact in paragraph 61. Petitioners allege that the ALJ’s finding adopts “conclusory and incorrect legal interpretations” made by Respondent’s and Intervenors’ expert witness. The Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 26 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

The Department finds there is competent substantial evidence in the record to support the ALJ’s finding of fact. Hearing Transcript, Volume III, page 569-578. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is “some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, ‘tending to prove’) as to each essential element” of the claim. *Id.* It is not the place of the Department to “weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ’s findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ’s finding of fact in paragraph 61.

Exception 26 is DENIED.

(27) – Exception 27: Paragraph 64 of the Recommended Order (RO page 17)

In Exception 27, Petitioners take exception to the finding of fact in paragraph 64 concerning expert witness testimony on the County’s review of public-school capacity. Petitioners

allege that there is no competent substantial evidence to support the finding of fact.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding concerning school capacity review. Hearing Transcript, Volume II, pages 277-278, and page 309. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 64.

Exception 27 is DENIED.

(28) – Exception 28: Paragraphs 65-67 of the Recommended Order (RO page 17)

In Exception 28, Petitioners take exception to the findings of fact in paragraphs 65-67. Petitioners allege that the findings are incorrect conclusions of law.

Pursuant to section 120.57(1)(k), Florida Statutes, an "agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Exception 28 fails to include appropriate and specific citations to the record.

Nonetheless, the Department has considered Petitioners' Exception 28 and finds that the

ALJ's findings of fact were supported by competent substantial evidence. The Department cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

To the extent Petitioners' exception argues the finding is an incorrect legal conclusion, the Department has considered Exception 28 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 28 is DENIED.

(29) – Exception 29: Paragraph 68 of the Recommended Order (RO pages 17-18)

In Exception 29, Petitioners take exception to the finding of fact in paragraph 68 concerning the County's active roadway extension and construction project. Petitioners allege that there is no competent substantial evidence to support the ALJ's finding.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding concerning the County's roadway project. Hearing Transcript, Volume II pages 505-517 and Volume III, pages 531-538. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraph 68.

Exception 29 is DENIED.

(30) – Exception 30: Paragraph 69 of the Recommended Order (RO page 18)

In Exception 30, Petitioners take exception to the finding of fact in paragraph 69 concerning the capacity of the existing transportation infrastructure. The Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 30 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence and testimony presented to the ALJ.

Additionally, section 120.57(1)(k), Florida Statutes, provides that an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 30 fails to include a legal basis for rejecting or modifying any of the ALJ’s findings of fact.

Nonetheless, the Department has considered Petitioners’ Exception 30 and finds that the ALJ’s finding of fact in paragraph 69 is supported by competent substantial evidence. The Department cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

Exception 30 is DENIED.

(31) – Exception 31: Paragraphs 70-72 of the Recommended Order (RO page 18)

In Exception 31, Petitioners take exception to the findings of fact in paragraphs 70-72. Petitioners allege that no evidence exists to support the findings in paragraphs 70 and 71 that Respondent’s and Intervenors’ expert witness performed a “worst-case scenario analysis of the maximum development potential allowed.” Petitioners also appear to argue that the ALJ’s finding of fact in paragraph 72 is an incorrect conclusion of law.

The Department finds there is competent substantial evidence in the record to support the ALJ's findings of fact. Hearing Transcript, Volume III, page 526-538. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's findings of fact in paragraphs 70 and 71.

To the extent Petitioners' exception argues the finding of fact in paragraph 72 is an incorrect legal conclusion, the Department has considered Exception 31 and cannot substitute a legal conclusion as reasonable as or more reasonable than that reached by the ALJ.

Exception 31 is DENIED.

(32) – Exception 32: Paragraphs 73 and 74 of the Recommended Order (RO page 19)

In Exception 32, Petitioners take exception to the findings of fact in paragraphs 73 and 74. Petitioners contend that there was no competent substantial evidence to support the finding that the County considered the suitability of the proposed land use change in light of the properties' soils, topography, natural resources, or historic resources. Petitioners appear to ask the Department to reweigh the testimony presented by their expert witness. The Department cannot reweigh the evidence or judge credibility of witnesses. *See Heifetz*, 475 So. 2d at 1281. Exception 32 is denied to the extent that it requests the Department to modify or reject findings by reweighing evidence

and testimony presented to the ALJ.

The Department finds there is competent substantial evidence in the record to support the ALJ's findings of fact. Hearing Transcript, Volume II, pages 334-353. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraphs 73 and 74.

Exception 32 is DENIED.

(33) – Exception 33: Paragraph 75 of the Recommended Order (RO page 19)

In Exception 33, Petitioners take exception to the finding of fact in paragraph 75. Petitioners allege that no competent substantial evidence or testimony was presented to support the ALJ's finding of fact.

The Department finds there is competent substantial evidence in the record to support the ALJ's finding of fact. Hearing Transcript Volume I, pages 136-138, Volume II, pages 268-269 and Volume III, pages 538-580. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the

claim. *Id.* It is not the place of the Department to “weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.” *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ’s findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ’s finding of fact in paragraph 75.

Exception 33 is DENIED.

(34) – Exception 34: Paragraph 76 of the Recommended Order (RO page 19)

In Exception 34, Petitioners take exception to the finding of fact in paragraph 76. Petitioners allege that no competent substantial environmental evidence presented to support the ALJ’s finding that allowing the three properties to withdraw from the OSP would have no immediate impact on the wildlife, ecology, or biology of the County.

Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 34 does not include appropriate and specific citations to the record.

Nonetheless, the Department has considered Petitioners’ Exception 34 and finds that the ALJ’s findings of fact in paragraph 76 is supported by competent substantial evidence. The Department cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

Exception 34 is DENIED.

(35) – Exception 35: Paragraphs 77 and 78 of the Recommended Order (RO pages 19-20)

In Exception 35, Petitioners take exception to the findings of fact in paragraphs 77 and 78 on the basis that the findings are not supported by competent substantial evidence.

The Department finds there is competent substantial evidence in the record to support the ALJ's findings. Hearing Transcript Volume I, pages 143-145 and Intervenors' Exhibit 2. Evidence is competent if it is admissible under the pertinent legal rules of evidence. *Scholastic Book Fairs, Inc.*, 671 So. 2d at 290 n.3. Evidence is substantial if there is "some (more than a mere iota or scintilla), real, material, pertinent, and relevant evidence . . . having definite probative value (that is, 'tending to prove') as to each essential element" of the claim. *Id.* It is not the place of the Department to "weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." *Heifetz*, 475 So. 2d at 1281. Therefore, so long as competent substantial evidence supports the ALJ's findings of fact, the agency may not reject them to make alternative findings supported by evidence. *Lantz*, 16 So. 3d at 521. The Department finds competent substantial evidence supports the ALJ's finding of fact in paragraphs 77 and 78.

Exception 35 is DENIED.

(36) – Exception 36: Paragraph 79 of the Recommended Order (RO page 20)

In Exception 36, Petitioners take exception to the finding of fact in paragraph 79. Petitioners allege that no competent substantial evidence supports the finding that the MU-S FLU category is suitable in light of the existing character of the three opt-out properties.

Pursuant to section 120.57(1)(k), Florida Statutes, an "agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Exception 36 does not include appropriate and specific citations to the record.

Exception 36 is DENIED.

(37) – Exception 37: Paragraphs 82-84 of the Recommended Order (RO page 20)

In Exception 37, Petitioners take exception to the findings of fact in paragraphs 82-84. Petitioners allege that the ALJ did not consider Chapter 16 of the County’s Comp Plan for consistency with the proposed FLU category.

Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 37 fails to include a legal basis for rejecting or modifying the ALJ’s findings of fact in paragraphs 82-84.

Nonetheless, the Department has considered Petitioners’ Exception 37 and finds that the ALJ’s findings of fact in paragraphs 82-84 are supported by competent substantial evidence. The Department cannot determine that the proceedings on which the findings were based failed to comply with the essential requirements of law.

Exception 37 is DENIED.

(38) – Exception 38: Paragraphs 90 and 91 of the Recommended Order (RO pages 21-22)

In Exception 38, Petitioners take exception to the conclusions of law in paragraphs 90 and 91 and argue the conclusions of law are legally incorrect. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 38 does not include appropriate and specific citations to the record.

Nonetheless, the Department has considered the matter and finds that the ALJ’s

conclusions of law in paragraphs 90 and 91 cited in Exception 38 are reasonable, and the Department does not have any substitute conclusions of law that are as or more reasonable than those of the ALJ.

Exception 38 is DENIED.

(39) – Exception 39: Paragraph 92 of the Recommended Order (RO page 22)

In Exception 39, Petitioners take exception to the conclusion of law in paragraph 92. Petitioners allege that the conclusion is not supported by competent substantial evidence.

The Department has considered the matter and finds that the ALJ’s conclusion of law in paragraph 92 is reasonable, and the Department does not have any substitute conclusions of law that are as or more reasonable than those of the ALJ. Additionally, the Department finds that the findings of fact in paragraphs 5-11 of the Recommended Order support the ALJ’s conclusion of law.

Exception 39 is DENIED.

(40) – Exception 40: Paragraph 93 of the Recommended Order (RO page 22)

In Exception 40, Petitioners take exception to the conclusion of law in paragraph 93. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 40 fails to include a legal basis for rejecting or modifying the ALJ’s conclusion of law in paragraph 93.

Nonetheless, the Department has considered the matter and finds that the ALJ’s conclusion of law in paragraph 93 is reasonable, and the Department does not have any substitute conclusions of law that are as or more reasonable than those of the ALJ in the paragraphs cited in Exception

40. Additionally, the Department finds that the findings of fact in paragraphs 5-14 of the Recommended Order support the ALJ's conclusion of law.

Exception 40 is DENIED.

(41) – Exception 41: Paragraph 101 of the Recommended Order (RO page 24)

In Exception 41, Petitioners take exception to the conclusion of law in paragraph 101. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 41 fails to include a legal basis for rejecting or modifying the ALJ's conclusion of law in paragraph 101.

Nonetheless, the Department has considered the matter and finds that the ALJ's conclusions of law in paragraph 101 is reasonable, and the Department does not have any substitute conclusions of law that are as or more reasonable than those of the ALJ.

Exception 41 is DENIED.

(42) – Exception 42: Paragraph 103 of the Recommended Order (RO page 24)

In Exception 42, Petitioners take exception to the conclusion of law in paragraph 103. Petitioners allege that the ALJ attributed the Respondent's and Intervenors' argument to Petitioners. Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Exception 42 fails to include a legal basis for rejecting or modifying the ALJ's conclusion of law and does not include appropriate and specific citations to the record.

Exception 42 is DENIED.

(43) – Exception 43: Paragraph 109 of the Recommended Order (RO page 25)

In Exception 43, Petitioners take exception to the conclusion of law in paragraph 109. It appears that Petitioners allege that there was no competent substantial evidence to support ALJ’s conclusion of law.

The Department has considered the matter and finds that the ALJ’s conclusion of law in paragraph 109 cited in Exception 43 is reasonable, and the Department does not have any substitute conclusions of law that are as or more reasonable than those of the ALJ. Additionally, the Department finds that the findings of facts throughout the Recommended Order support the ALJ’s conclusion of law.

Exception 43 is DENIED.

(44) – Exception 44: Lack of Meaningful Standards

In paragraphs 44 through 48 of Petitioners’ Exceptions to Recommended Order, Petitioners attempt to relitigate the matter and argue that the Plan Amendments are internally inconsistent with the Escambia County Comp Plan, are not based on relevant and appropriate data and analysis, and do not establish meaningful and predictable standards. To the extent paragraphs 44 through 48 of Petitioners’ Exceptions to Recommended Order are an exception, the Department has considered those paragraphs as “Exception 44.”

Pursuant to section 120.57(1)(k), Florida Statutes, an “agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.” Paragraphs 44 through 48 of Petitioners’ Exceptions to Recommended Order fail to identify the disputed portion of the recommended order

by page number or paragraph, do not identify the legal basis for the exception, and do not include appropriate and specific citations to the record.

Exception 44 is DENIED.

Remainder of the Recommended Order

The Department has reviewed the remainder of the Recommended Order and concludes that all findings of fact therein were based on competent substantial evidence in the record. The Department finds that the proceedings on which the findings of fact were based complied with the essential requirements of law.

The Department has reviewed the ALJ's conclusions of law and finds that all conclusions of law within the Department's substantive jurisdiction are reasonable. The Department does not have any substitute conclusions of law that would be as or more reasonable than the ALJ's conclusions of law.

ORDER

Based on the foregoing, the Department determines that the Plan Amendment is "in compliance," as defined in section 163.3184(1)(b), Florida Statutes. The Department adopts and incorporates the Recommended Order into the Department's Final Order.

Dated this 5th day of August, 2021.



Mario Rubio, Director
Division of Community Development
Florida Department of Economic Opportunity

NOTICE OF RIGHT TO JUDICIAL REVIEW

THIS FINAL ORDER CONSTITUTES FINAL AGENCY ACTION UNDER CHAPTER 120, FLORIDA STATUTES. A PARTY WHO IS ADVERSELY AFFECTED BY FINAL AGENCY ACTION IS ENTITLED TO JUDICIAL REVIEW IN ACCORDANCE WITH SECTION 120.68, FLORIDA STATUTES, AND FLORIDA RULES OF APPELLATE PROCEDURE 9.030(B)(1)(C) AND 9.110.

TO INITIATE JUDICIAL REVIEW OF THIS FINAL AGENCY ACTION, A NOTICE OF APPEAL MUST BE FILED WITH THE DEPARTMENT'S AGENCY CLERK, 107 EAST MADISON STREET, CALDWELL BUILDING, MSC 110, TALLAHASSEE, FLORIDA 32399-4128, AGENCY.CLERK@DEO.MYFLORIDA.COM, WITHIN THIRTY (30) CALENDAR DAYS AFTER THE DATE OF THE FINAL AGENCY ACTION. A DOCUMENT IS FILED WITH THE AGENCY CLERK WHEN IT IS RECEIVED BY THE AGENCY CLERK. THE NOTICE OF APPEAL MUST BE SUBSTANTIALLY IN THE FORM PRESCRIBED BY FLORIDA RULE OF APPELLATE PROCEDURE 9.900(A). A COPY OF THE NOTICE OF APPEAL MUST ALSO BE FILED WITH THE APPROPRIATE DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE ACCOMPANIED BY THE FILING FEE SPECIFIED IN SECTION 35.22, FLORIDA STATUTES.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 5th day of August 2021.



Agency Clerk

Florida Department of Economic Opportunity
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Francine M. Ffolkes
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

By U.S. Mail:

Jacqueline A. Rogers
Neal Road/Knollwood Neighborhood
1420 Ridge Way
Cantonment, Florida 32533-7991

Kia M. Johnson, Esquire
Office of the Escambia County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502-5837

Theresa Blackwell
9535 Tower Ridge Road
Pensacola, Florida 32526

Frank E. Westmark & Elizabeth J. Westmark
Post Office Box 575
Cantonment, Florida 32533

William Beech
1956 West Kingsfield Road
Cantonment, Florida 32533

Sally B. Fox, Esquire
Emmanuel, Sheppard & Condon, P.A.
30 South Spring Street
Pensacola, Florida 32502

Charles V. Peppler, Esquire
Office of the Escambia County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502

Jaiden Foss, Agency Clerk
Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399-4128